

Comment on GN Docket No. 12-52
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on behalf of the Free Network Foundation

Part 1 – Past practices

It is the practice of a tyrant to prevent the free flow of information amongst their populace – not the practice of a truly democratic republic. When BART shut down cellular service this past August, they trespassed against national principle and the public trust. It is certainly possible to use wireless networks nefariously – the same is true of the printing press, the automobile, or any other technology. Too little care has been taken to prevent protected speech from being limited in the name of security. Repressive regimes through history have used state power to turn communications infrastructure against the will of the people, and actions on the part of BART would seem to suggest a similar *modus operandi*.

Part 2 – Predicates for censorship

It is possible to imagine some sensational and highly unlikely scenarios in which disruption of wireless service might seem to be in the interest of the public good. In order to justify the significant collateral damage in terms of both liberty and basic human safety, such situations would have to entail a direct and imminent threat of violence on a large scale – a remote detonator, perhaps, or a cyberattack against critical infrastructure.

That being said, it is far easier to imagine situations in which the ability to disrupt wireless communications would be misused or abused. Especially if unchecked by a transparent process, it is all too possible to imagine scenarios in which wireless disruption capabilities are used in cases that do not warrant such drastic action, in which they are counterproductive, or in which they are used in an extralegal manner at the behest of local or special interests.

That it is possible to imagine a few situations in which service disruption might genuinely protect the public does not justify the legalization of such practice. It is also possible to imagine situations in which

Part 3 – Risks

Some of the risks inherent in the censorship of wireless communications are readily apparent – preventing people from contacting first responders is a clear risk. Other risks are less apparent – inability to communicate in times of crisis and distress might alarm the populace and further destabilize already chaotic situations.

The practical risks of wireless disruption are complex and varied, but are relatively known. There is another sort of risk, though, that is slower acting, but at least as powerful. The notion that we might inadvertently weaken the ethical and moral fiber of our society in an attempt to assure its security is not one to be taken lightly. The protection of speech, even when it comes with significant downsides is a central tenet of our social compact.

Part 4 – Methods

While intelligent, narrowly focused disruptions are possible, these proceedings appear to focus on disruptions of broader scope. Whether such interruption can be limited to non-emergency calls or not should be a secondary consideration to whether or not it is possible to disrupt wireless service without unduly abridging the liberties of the general public. General disruptions, by their very nature, are prone to cause collateral damage to the free speech rights of innocent parties.

Part 5 – Authority to Interrupt

The gravity of the state engaging in broad and intentional censorship for any purpose is

considerable. We cannot recommend that such authority be granted. The permission of such authority would run counter to known jurisprudence.

Part 6 – Legal Constraints

The Federal Code does not provide for the establishment of a disruption capacity. USC 47 § 202 explicitly outlaws such practice. USC 47 §214 does not regard the target disruption of service, but rather the temporary discontinuance, reduction, or impairment of service with regard to the provision of adequate service. The capacity to disrupt wireless service by legal order is highly dissimilar, from the issues in USC 47 §302 – the ability to shut down service on command is not a technical feature or standard. Likewise USC 47 §333 does not apply, as the method of interruption are unlikely to be RF interference. Ultimately, the strongest argument against authorizing general situational censorship comes from the constitution itself.

Any conceivable general disruption of wireless service would countermand constitutional law. Such a disruption would fall squarely within the definition of unjustified prior restraint with regard to all those affected, outside of the targets. A legal mechanism for censorship of wireless communications would undoubtedly introduce a chilling affect on free speech in the digital environment. The BART case makes it clear that such shutdowns might be used to stymie expression and limit assembly.